A

History Behind Litigation

IN THE SOUTHERN DIVISION OF THE UNITED STATES

1) The petitioner is serving a life sentence in the United States Penitentiary at Alcatraz, California. He has been in prison for forty-two years, and for the last thirty-five years he has been continuously kept in solitary confinement.

2) The sentence he is now serving is the result of the commutation by President Wilson of a death sentence imposed upon him in July, 1918, by the United States District Court for the District of Kansas upon a conviction of murder resulting from the killing of a guard in the prison dining room at Leavenworth on Sunday, March 26, 1916.

3) At the time of this homocide, the petitioner was serving a twelve year sentence imposed upon him in Alaska for the crime of manslaughter committed in Juneau, Alaska, on January 18, 1909.

4) The sentence of death was imposed by District Judge Robert E. Lewis, of Denver, Colorado, and following the form prescribed by the statutes of that state (See In re Medley, 134 U. S. 160) contained a clause which reads:

> "——that you be held in solitary confinement until the 8th day of November next——"

5) President Wilson, on the 16th day of April, 1920, modified the sentence of death by scrawling on the face of the clemency papers:

> "Commuted to Life—W. W.

6) The petitioner, who entered prison as a nineteen year old boy without formal education, has since his first

day in prison, spent all of his spare time in self-improvement studies, and had, during the seven years preceding the killing at Leavenworth, given himself the foundation of a sound scientific education.

7) Following the commutation of his sentence of death, the question of how his life sentence was to be served became an issue.

8) The prison authorities were anxious to continue to hold the Petitioner in solitary confinement in the Isolation Building, but under the law as it then existed, they were required to treat him exactly the same as any other newly admitted inmate (See Revised Statutes, with annotations following sections R. S. 5537 to 5547) and petitioner's mother and his attorney's insisted that he be treated the same as any other prisoner or that he be transferred to some other institution pursuant to R. S. section 5546, and threatened to take the matter to court.

9) The Department of Justice, realizing that the law was clear and that its position could not be maintained in court was anxious to compromise; and the petitioner, being of a studious turn of mind, could see advantages to be gained by coming to an understanding with the prison authorities.

10) He agreed not to contest the question of his confinement in isolation and to cause no trouble for the prison authorities, providing he was given all the privileges of other first grade prisoners and in addition such special privileges as would permit him to keep his mind occupied.

11) This understanding was approved by A. Mitchell Palmer, then Attorney General, and pursuant to same petitioner, devoted himself to breeding canaries and a scientific study of the diseases of pet birds. He established a profit-business in birds; gave himself a sound education in the biological sciences essential to the study of diseases; established a laboratory at his own expense; and became a writer on the subjects of avian biology, pathology, and therapeutics, upon which he carried out extensive researches, the results of which he published in various trade and scientific journals.

12) As a result of his researches, the petitioner made important scientific discoveries and became known throughout the world as the foremost authority on the diseases of pet birds, and his work was recognized and encouraged by the various prison administrators and the Attorney General, over a period of eleven years, as a valuable public service.

13) During this period, 1920-1931, the petitioner established a profitable business beyond the prison walls for the exploitation of certain of his scientific discoveries, and this was done with the approval of the prison authorities and the Attorney General.

14) It was a part of the understanding under which the necessary privileges were granted that the petitioner would never at any time capitalize upon his criminal record or the fact that he was a convict in a solitary cell, nor at any time do anything inimical to or apt to bring criticism upon the prison authorities, and during this eleven year period, both the petitioner and the prison authorities

lived up to their respective parts of this understanding religiously.

15) With the coming into power of the Federal Bureau of Prisons and the establishment of their policies in 1931, orders were issued which made it impossible for the petitioner to continue by restrict his purchase of food and supplies for his birds. This was done by Sanford Bates over the protest of J. B. White, Warden at Leavenworth.

16) The petitioner, who at that time knew absolutely nothing about legal procedure, was refused permission to consult an attorney, and being in solitary confinement, was unable to seek the advice of legally experienced fellow inmates, and so, he was effectively deprived of access to the courts.

17) During the above mentioned period, the petitioner had made thousands of loyal friends who had no idea that he was in prison. When these friends learned of the petitioner's plight, they set in motion a wave of nationwide publicity critical of the arbitrary and unfair conduct of the Federal Bureau of Prisons of such intensity that 431 members of the congress, the same men who had enacted the prison bureau laws, made forceful representations to Sanford Bates, who was then Director of the Federal Bureau of Prisons, in petitioner's behalf, thirty-four of these gentlemen recommended that petitioner be given a pardon in recognition of his accomplishments. The vast majority recommended that petitioner be paroled at the earliest possible date. Every one of these men took the views that the application of the provisions of the prison bureau laws to the injury of the petitioner would be an ex post

fact punishment of added severity and therefore, illegal. One of the more than 100,000 persons who signed petitions for the petitioner's release at that time was Harry S. Truman, Kansas City, Mo., President of the United States. Herbert Hoover, then president, said that he thought the petitioner deserved a break and that he would like to give him a pardon but felt constrained to follow the recommendations of Mr. Bates, who believed that petitioner should be paroled as soon as he became eligible. The reaction of Congress was apitomized by Representative McSwain of South Carolina, then ranking Democratic member of the subcommittee on appropriations for the Department of Jusitce, who, in a letter to Sanford Bates, wrote:

> "We did not give you the broad powers you enjoy with the intention that they should be employed to destroy the fruits of any man's good conduct and honest industry (Quotation from memory).

18) This public reaction and the attitude of the President and Congress forced upon Mr. Bates the realization that he had gone too far. In his efforts to save *face* he came up with a rule not previously promulgated to the effect that inmates were not permitted to employ their correspondence for the transaction of business (R. 60). The first notice Warden White had of this rule was reference to it in the Kansas City Star on October 4, 1931. (See Brief, Argument IV, P. 30.) But Mr. Bates had noted that petitioner took great pride in the fact that his work was of public service, and he had a grand idea. He would socialize petitioner's business under the Federal Prison Industries, Incorporated. The Government would go into

partnership with petitioner. They would have an invoice taken of petitioner's stock and equipment, the Government would match petitioner's investment, dollar for dollar; the petitioner would be permitted to raise the birds and the Federal Prison Industries would sell them and transact all business; the profit would be split 50-50; and the Government's share would be turned over to the prisoners' amusement fund, so that the petitioner could feel that he was being of service to his fellow inmates.

19) A formal contract between the Federal Prison Industries, Incorporated, and the petitioner was drawn up by Mr. — Shelton, Superintendent of Industries at Leavenworth, and signed by Mr. Shelton for the Government corporation and by the petitioner, and put into operation but when the contract and the rule under which it was drawn (R. 60, Note (1), came to the attention of Representative McSwain, he wrote a vigorous protest to Mr. Sanford Bates which he concluded with these words:

> "I would suggest that you pay more attention to the Constitution of the United States and less to the doctrines of Karl Marx."

20) Whereupon, Mr. Bates ordered James V. Bennett, then Assistant Director of the Bureau of Prisons, to come to Leavenworth and induce the petitioner to submit a counter proposal, which the petitioner refused to do. Petitioner insisted that the Bureau either live up to the terms of the original contract or that they turn him out, free.

21) The discussion continued from 7 P. M. on December 2, 1931, to 3 A. M., December 3, 1931. During the

course of this discussion Mr. Bennett repeatedly warned the petitioner in words and substance as follows:

> "You had better cooperate with us. You have the public behind you now, but the public soon forgets. We will not forget."

To which the writer replied:

> "You are using the wrong word, Mr. Bennett. *Co-operation* means *to act with*. It connotes mutual assistance for mutual benefit. I have not seen any indications of that on your part. For almost two years, you, Bates and McCormick (Austin H. McCormick, Ass't. Director of the Federal Bureau of Prisons) have been coming around here patting me on the back and telling me that I was doing fine. Then, at the first opportunity, you try to cut my throat and destroy everything I have created. When the heat comes on, you put out a lot of propaganda trying to show that I am insane. If you want cooperation, I would suggest that you practice a little of it."
>
> "I'll admit that we made a mistake, but now we want to help you."
>
> "O. K. Turn me out then! President Hoover has told certain persons that he believes that I have earned a break, that he would like to pardon me, but that he does not feel that he can disregard the recommendations of Mr. Bates."
>
> "You know that!"
>
> "I always know what pertains to me. I also know what was in McSwain's letters, for I composed it myself."

22) Mr. Bennett was forced to return to Washington and admit failure. Thereupon Mr. Austin H. McCormick

was dispatched to Leavenworth with orders to attempt to negotiate a settlement of the dispute. And an agreement was arrived at, which was finally written into an order of the date of January 1, 1932, which provided that the writer was to be exempt from all special regulations issued under the Prison Bureau Laws on the grounds that those laws were *ex post facto* as to him. He was placed under the direct jurisdiction of the Director of the Federal Bureau of Prisons, the Warden and the day guard in the isolation. It further provided that the petitioner should have new quarters, a special room for his birds and an outside window; that he should have improved laboratory facilities; permission to purchase all supplies essential to carrying on his researches, his studies, and the care of his birds, including any special scientific literature published in the English language. It provided that all business correspondence pertaining to his researches or the sale of his birds was to be privileged, that he was to enjoy all of the privileges of any other first grade prisoner, including permission to attend all entertainment and shows and to two hours per day for recreation and exercise in the fresh air. It was also promised in writing that petitioner would be paroled on February 27, 1937 (Kansas City Star, January, between 5th and 10th, 1931).

24) These concessions, granted as they were, under public and congressional pressure, were not entered into by the Federal Bureau of Prisons in good faith. From the very beginning up until the present time there has existed in the Federal Bureau of Prisons a conspiracy to accomplish by encroachment and methods of indirection what they had not been able to do by direct assault,

25) First, the petitioner's advertising and writing for the trade and scientific journels was stopped; then a plot was entered into to break up the petitioner's bird business by quietly shipping him to Alcatraz at the time that institution was taken over by the Federal Prison Bureau.

26) The petitioner learned of the plot and found methods of bringing it to public attention. And again his friends rallied to his support, and the order stopping that move was issued by Louis McHenry Howe, Private Secretary to President Roosevelt.

27) At that time, Homer S. Cummings, then Attorney General, angered by the adverse publicity which resulted from the exposure of this plot, issued an order in which he construed the petitioner's judgment as being a sentence to life imprisonment in solitary confinement and ordered that petitioner be held in solitary confinement for the rest of his life.

28) Throughout this period, from January 1, 1932, to December 16, 1942, the writer was consistently and repeatedly refused access to the courts or permission to consult an attorney, and during one period of more than two years was refused the right to write to a United States Attorney concerning a criminal violation of the copyright law. (Brief, P. 30.)

29) In 1933 the petitioner wrote a book: Diseases of Canaries ,by Robert Stroud, published by E. J. Powell, Kansas City, 1933. The publisher took advantage of the fact that the petitioner was a convict in the bad graces of the Prison Bureau, and beat the petitioner out of this royalty on the book.

30) The petitioner's business agent, at that time, Mrs. Della Mae Jone of Kansas City, had taken the precaution to protect petitioner's ownership of the copyright of this book, but Sanford Bates ordered the warden at Leavenworth not to permit petitioner to write any letters concerning his claim against the dishonest publisher. When the petitioner complained to Austin H. McCormick, he said:

> "After all the trouble you caused us before, you cannot expect us to even permit you to get your hands on enough money to put on another such campaign."

31) In 1939, the petitioner completed another and more comprehensive work on bird diseases, which, after four years effort, involving considerable protesting to the Bureau, by scientists and aviaullurists from all over the world, the writer was finally permitted to publish under the title, *Stroud's Digest On The Diseases Of The Bird,* Minneapolis, 1943, which has been highly praised as the most outstanding work of its kind by scientists and bird breeders in twenty-six countries.

32) Even though this work was published with the permission of the Federal Bureau of Prisons, that agency went to extreme lengths to discredit the petitioner and prevent the work from being a financial success.

33) These efforts included the transfer of the petitioner to Alcatraz upon trumped up charges upon which he was never tried before any disciplinary board or officer or of the nature of which he was never informed; yet, concerning which much false propaganda was put out to the public. Also many letters filed with completely

false charges and statements were mailed to the petitioner's friends in an attempt to discredit him and his work, and to scientists, asking them not to write favorable reviews of the book.

34) Since his arrival at Alcatraz, where from the first time he came in contact with men who knew a little concerning legal procedure and where for the first time he was able to secure some silght access to legal literature, the petitioner has made three attempts to carry the questions of these continuous assaults upon his property rights to the courts, but in no case has he been able to secure a hearing upon the merits of his contentions.

35) The first attempt was the filing of a petition for writ of habeas corpus on April 21, 1943, No. 23817, on the docket of the United States District Court for the Northern District of California, Southern Division.

36) The petition catalogued many encroachments upon the property and legal rights of the petitioner, and attempted to allege these infringements of the rights of the petitioner in proper form, but it was the petitioner's first attempt to write any legal document, and was probably very poorly drawn. The petition was filed in forma pauperis, and the petitioner prayed that an attorney be appointed to assist him in the prosecuting of the action.

37) The case was assigned to District Judge Louis E. Goodman.

Foot note to follow paragraph 33, Appendix.

Note: Among the lies put out by James V. Bennett in his attempt to libel and discredit the petitioner were the following which were given nationwide publicity.

One: *That Petitioner had sold J. Edgar Hoover a painted sparrow for $10.*

The truth is that in July, 1937, J. Edgar Hoover visited the petitioner's cell at Leavenworth and there saw a large cage containing twenty some snow white canaries—all young birds, not yet in song. Mr. Hoover wanted one of these birds, and he was told that it was the writer's opinion that they were all males, but since they were not yet in full song, there was the possibility of a mistake, but that any birds sold from that cage that did not prove to be a singer by October 1st would be replaced without charge. The price was $10.00.

There was another bird cage full of white birds in the room. These birds were all over one year old, they were proven and selected singers of the finest quality and were all of the Yorkshrie type. These birds were priced at $25.00 each.

Mr. Hoover decided that he wanted one of the cheaper birds, and was told that if the bird did not sing by October 1st it would be replaced at the petitioner's expense. The bird was selected by Mr. Hoover, placed in a shipping box in his presence, and the shipping labels consigning the bird to Mr. Hoover's mother, were made out and placed on the box by the petitioner and the bird was turned over to one of the agents present in the party with instructions to take it directly to the Express Office.

In October, petitioner heard that Mr. Hoover was displeased with the bird. He wrote to Mr. Hoover and told him that if he was displeased to write him at once, and he would replace the bird. Petitioner continued to hear stories of Mr. Hoover's displeasure, and wrote to him three times between October 1st and January 1st, 1938, urging him to inform the petitioner of his displeasure. Mr. Hoover did not reply to any of these letters.

In April, 1938, long after all of the cheaper birds had been sold Mr. Hoover sent agent Farland of Kansas City to Leavenworth to get a replacement for the bird. As the only white birds petitioner then had were the $25.00 birds, he was forced to send one of these to Mr. Hoover.

Agent Farland, not much impressed with the fairness of his superior's conduct, later purchased several of the higher priced birds himself as gifts for his friends.

Two: *Mr. Bennett displayed a dagger and gave out the story that petitioner had made that dagger to kill him with. The dagger had a wooden handle and was of beveled edge construction.*

Two versions of this story were widely published at Mr. Bennett's instigation.

Foot note continued.

a. *That the dagger had been found in petitioner's cell at Leavenworth and was the reason for his transfer to Alcatraz.*
6. *That petitioner had actually attempted to kill Mr. Bennett of Alcatraz, but that Mr. Bennett had been too smart for him and had snatched the knife away from him.*

The truth is that during one period in his life between 1915 and 1920, the petitioner made many daggers, but they were all of distinctive design and workmanship. They all had straight, parallel edges like a Roman Sword and short leather handles, with a leather thong to slip over the little finger, so that they could not be knocked from the hand.

The dagger in question was brought to the petitioner's cell at Leavenworth on the evening of December 15, 1942, by Mike Dodson, a negro orderly working in the Isolation, who was a stoolpigeon for Warden Hunter. Petitioner did not want to take the dagger, but Dodson begged him to keep it overnight. As Petitioner was dependent upon the orderly for many services, he could not very well refuse.

At five o'clock the next morning, the petitioner was seized in his sleep, in the best Nazi manner, chained hand and foot and transferred to Alcatraz. It is the petitioner's firm belief that the conduct of orderly Dodson was instigated by Warden Hunter at the suggestion of James V. Bennett. In any case, Petitioner was deliberately framed.

Had Petitioner wanted to harm Mr. Bennett, or any one else, he needed no dagger for the purpose, since he was allowed to have all kinds of tools, including wood chisels, an ice pick, several long screw drivers, a claw hammer, various knives, and a whole set of dissecting instruments, any one of which could have easily been used as a lethal weapon.

Who dismissed the action in a Memorandum Opinion filed on May 7, 1943, which is set out in full in Appendix B. On page 3, Page 54 herein the Judge wrote:

> "—Habeaus Corpus— (may not be used) to secure judicial determination of a question, which, even if determined in favor of petitioner, would not result in his release."

38) Thus indicating that the petitioner had raised questions, no matter how improperly they were raised, to which he had a right to a judicial determination.

39) The memorandum also states that the petitioner is treated no differently from other inmates of Alcatraz, which, of course, has never been true. The petitioner has been held in solitary confinement in Alcatraz for eight and one half years, the only difference being that Alcatraz is more poorly equipped for complete Isolation than Leavenworth, and at least ten per cent of the population is kept in the Isolation.

40) During his eight and one half years in Alcatraz the petitioner has never been permitted to enjoy any of the recreations allowed other inmates or to engage in any of the activities permitted other inmates. For the last three years he has been confined to a single room in the prison hospital and has not been allowed out of it excepting to bathe, go to the toilet, and for infrequent visits with his brother or an attorney.

41) Prior to the beginning of the administration of Warden E. B. Swope, the present Warden of Alcatraz, in 1948, the petitioner was allowed to carry on business correspondence through his present agent, L. G. Marcus, with bird breeders, friends, and scientists. He was also permitted to keep himself abreast of scientific literature and had in his possession approximately four hundred dollars worth of books purchased with the approval of the former Warden, James A. Johnston.

42) The original agreement with the Bureau under which the petitioner was allowed to publish his book, *Stroud's Digest On The Diseases Of Birds,* provided for such correspondence and provided for bringing out revised editions of the work from time to time.

43) On August, 1948, E. B. Swope cut off the correspondence with third persons through petitioners agent, interfered with business letters to said agent advising him of the wishes of the petitioner concerning the handling of his property, seized the petitioner's books, and blocked the petitioner's work on the revision of his book, for which preparations had already been made and in preparation for which the petitioner had devoted five years to literary research.

44) Said conduct of E. B. Swope, cost the petitioner a heavy financial loss.

45) On September 9, 1948, petitioner made his second attempt to bring the above mentioned matters before a court. He filed in the District Court for the Northern District of California a petition for an injunction, *Stroud* v. *Swope,* No. 28295, in which he alleged unlawful invasion of his property rights in violation of section 41 and 43 of Title 8, U. S. C.

46) This case was assigned to District Judge George B. Harris, who issued an order to show cause and set a date for a hearing.

47) The petition in this case was drawn at a time when the petitioner was very ill and was under heavy mental and physical strain, so it probably was not very nicely drawn, but following the filing of the petition, two attorneys appeared for the petitioner: Mr. William Fallon, Esq., Sutter Street, San Francisco, California, who donated his services and was appointed by the court without consulting the petitioner; and Mr. Jacques Leslie, Esq., 275 South Beverly Drive, Beverly Hills, California, who was

also attorney for Richard Palimar, of Palimar Productions, an independent producer of Motion Pictures who was interested in acquiring the motion picture and Television rights to the story of the petitioner's life.

48) The petitioner accepted the services of these attorneys very much against his better judgment, since he feared that the one had been inspired to enter the case at the instigation of the prison officials, a fear that was probably without foundation, and that the other was more interested in assisting Palimar to probably rob him than in his welfare, a fear that proved to be fully founded.

49) The Warden filed a motion to dismiss on the grounds that the petition did not state a cause for action upon which relief could be granted, and this matter was argued by Jacques Leslie for the petitioner and Joseph Karesh, Assistant United States Attorney, for the respondent, before U. S. District Judge Dal M. Lemmon, sitting for Judge Harris, who was otherwise engaged, on December 6, 1948, and the petitioner later learned that Mr. Leslie's argument had not been addressed to the issues before the Court, but had been designed to and did hoodwink petitioner's agent, who was present.

50) Judge Lemmon dismissed the action without prejudice on the grounds that since petitioner who had drawn his papers without assistance of counsel, was represented by attorneys at the hearing, the pleadings should be properly drawn, as to an alleged invasion of property right and to show the court's jurisdiction to grant the relief prayed for (Appendix C). He allowed ten days for filing an amended petition.

51) The memorandum was filed on December 7, 1948, but the clerk of the court failed to notify petitioner's attorneys of the filing of the memorandum within the time limit set by Judge Lemmon.

52) As soon as William Fallon heard of the filing of the memorandum, he appeared before Judge Harris and asked for an enlargement of the time. Judge Harris informed Mr. Fallon that the amended pleadings could be filed at the convenience of attorneys.

53) William Fallon informed petitioner that he had no facilities for the preparation of papers, but that they would be prepared by Mr. Leslie, (See letter from William Fallon, Appendix D. The word *Attorney* used in the last two paragraphs refers to Mr. Leslie. The typewriter referred to is one owned by petitioner which he offered to give to Mr. Fallon).

54) Mr. Leslie promised repeatedly through Mr. Fallon through Mr. Marcus, and by letter to petitioner (See two letters, Appendix D) to prepare the papers at once, but he procrastinated for more than a year, and never did prepare them.

54a) During that year the petitioner learned that Mr. Leslie through false promises of what he was doing for petitioner had induced petitioner's agent to sell to Mr. Palimar the motion-picture and television right to the story of the petitioner's life for the paltry sum of ten thousand dollars to be paid to petitioner within one year if the picture was not in production, or at the start of production; that Richard Palimar was insolvent and had hoped to use the petitioner to recoup his finances; that

the scheme to do this had been hatched by Mr. Leslie, to whom Mr. Palimar was deeply in debt, and that Mr. Leslie had entered petitioner's litigation for the express purpose of seeing that the suit was killed.

55) At the end of the one year period, when petitioner's agent demanded that the ten thousand dollars be paid or that the material and documents supplied to Mr. Palimar be returned, Mr. Leslie wrote a letter to petitioner's agent demanding that the contract be renewed on the strength of this devotion to petitioner's legal interest. Petitioner's reply to that letter is set out in the record (R. 29-48).

56) This in turn involved petitioner's agent in a law suit in the courts of California which cost petitioner and his agent more than three thousand dollars against the story in question.

57) All of the above mentioned losses were the result of the respondents interference with petitioner's correspondents, which prevented complete understanding between petitioner and his agent, and deprived petitioner's agent of petitioner's advice.

58) These serious financial losses forced the petitioner to sell the rights to his book, *Stroud's Digest On The Diseases Of Birds,* at a sacrifice price and for much less than could have been obtained had petitioner had the advantage of his advice and instruction which was withheld from him by the respondent (R. 22-23), in order to pay his pressing debts.

59) Thereupon, petitioner filed the present suit in the District Court.

60) The petitioner is a man of more than average creative ability. Throughout the years since the setting up of the Federal Bureau of Prisons, and within the duration of and as a direct result of the conspiracy alleged in the District Court (R. 3, 5, 6, 7, 15), the petitioner has been repeatedly robbed of the fruits of his creative activity, and has been forced to see others profit from his labor to the tune of hundreds of thousands of dollars while he is forced to bring this petition on borrowed funds because the actions of the respondent and the other conspirators named in the record (R., 5); yet in no case has he been able to obtain a hearing upon the merits of his complaint.

61) So, petitioner is impelled to ask if this is a fair sample of the much vaunted American Justice of which we so loudly boast; if it is the kind of public conduct which has the approval of this court of last resort.

ROBERT STROUD, No. 594,

Alcatraz, California.

STATE OF CALIFORNIA,
COUNTY OF SAN FRANCISCO. } ss.

Comes now Robert Stroud who says that he is the author of the above sketch of the history and circumstances behind this litigation; that all statements made therein are true, are well known to the Federal Bureau of Prisons and to the respondent, and that most of them can be proven by official documents.

Warden-Associate Warden authorized by the Act of February 11, 1938, to administer oaths.

Subscribed and sworn to before me this 19th day of July, 1951.

NOVA F. STUCKER,
Acting Associate Warden, United States Penitentiary, Alcatraz, California.

Records at U. S. Penitentiary, Alcatraz, California, indicate that Robert Stroud is a citizen of the United States.

In the Southern Division of the United States District Court for the Northern District of California

ROBERT STROUD, *Petitioner.*	No. 23817
vs.	
JAMES A. JOHNSTON, U. S. P., Alcatraz, California, *Respondent.*	

On Petition for Writ of Habeas Corpus

Memorandum Opinion

Petitioner, in addition to his petition for writ of habeas corpus, has filed a motion for subpoena duces tecum and a motion for writ of habeas corpus ad testificandum. It appears from the 29 page petition for the issuance of the writ, that Stroud was, on a conviction of murder in the first degree in the District Court of the United States for the District of Kansas sentenced to death and the judgment was affirmed by the Supreme Court. (*Stroud* v. *U.S.*, 251 U. S. 15.) On April 16, 1920, President Woodrow Wilson commuted the sentence to life. The sentence provided that petitioner should be held in solitary confinement until the death penalty was exacted. Upon commutation by the President, the Attorney General ruled that the life sentence should be served in solitary confinement in an isolation building of the United States Penitentiary at Leavenworth, Kansas.

Petitioner alleges that he was held in solitary confinement at Leavenworth prison from June 28, 1918, to December 16, 1942 (petition for writ, page 10). However in the verified motion for subpoena duces tecum petitioner alleges that he was held in "limited solitary confinement" during the period stated and that he enjoyed most of the privileges of the other prison inmates. It is alleged that on August 1 1942, a new prison warden, one Walter A. Hunter, was appointed and that Hunter embarked upon a course of persecution of petitioner, and, finally, with the connivance of the Attorney General and the Director of the Bureau of Prisons, caused the transfer of petitioner on December 16, 1942, to the United States Penitentiary at Alcatraz, California, within the jurisdiction of this Court.

Petitioner first complains that he was unlawfully imprisoned because of the vagueness and ambiguity of the sentence, and that his constitutional privileges (Constitution; Amendment V) were violated by the order of solitary confinement.

However, it appears on the face of the petition, that petitioner is not in solitary confinement at the Alcatraz Prison and is there receiving no different treatment than that accorded to other prisoners there confined. We are concerned here only with the legality of petitioner's restraint at the time of filing his petition.

Dunlap v. *Swope* (9 Cir.), 103 Fed. (2d) 19.

Petitioner's so-called "limited solitary confinement" in the Leavenworth prison is not a ground for relief. The function of the writ of habeas corpus is to determine

whether the detained person is entitled to immediate release and not to secure a judicial determination of a question, which, even if determined in favor of petitioner, would not result in his release.

McNealy v. *Johnston* (9 Cir.), 100 Fed. (2d) 280.

Petitioner's second contention is that his confinement at Alcatraz Prison subjects him to cruel and inhuman punishment within the meaning of the Eighth Amendment to the Constitution. It appears in the petition that he was not and is not imprisoned in solitary confinement at Alcatraz prison. His claim that his detention is in violation of the Eighth Amendment of the Constitution, on the face of the petition, is without merit.

Petitioner's third point, which he stresses at great length, is that his confinement at Alcatraz penitentiary is in violation of Article I, Section 9, Clause 3 of the Constitution. (Petitioner apparently means Article I, Sec. 16 of the Constitution.) In this behalf he alleged that the Statute (18 U. S. C. A. 753F) which empowers the Attorney General to transfer Federal prisoners from one Federal Penitentiary to another was adopted subsequent to the sentence imposed upon him and is therefore ex post facto. This contention is without merit.

In re: *Berman* (7 Cir) 80 Fed. (2d) 361

Petitioner alleges, as part of his third point, that the Attorney General acted arbitrarily in causing him to be removed to Alcatraz prison for the reason that it was not for his well being or to relieve overcrowded unhealthful conditions at Fort Leavenworth. However, it is well settled that the matter of the transfer of prisoners from one peniten-

tiary to another is within the discretion of the Attorney General.

In re: *Berman,* supra

The Court is not required to either award a writ or to issue an order to respondent to show cause, where, from the face of the petition, no issue of fact is presented.

28 U. S. C. A. 455.

Erickson v. *Hodges* (7 Cir.) 179 Fed. 177.

Accordingly, the motion for subpoena duces tecum is denied; the motion for writ of habeas corpus ad testificanficandum is denied and the petition for writ of habeas corpus is denied and the petition is dismissed.

Dated: May 6, 1943.

The Court is not required to either award a writ or to issue an order to respondent to show cause, where, from the face of the petition, no issue of fact is presented.

28 U. S. C. A. 455.

Erickson v. *Hodges* (7 Cir.) 179 Fed. 17.

Accordingly, the motion for subpoena duces tecum is denied; the motion for writ of habeas corpus ad testificandum is denied and the petition for writ of habeas corpus is denied and the petition is dismissed.

Dated: May 6, 1943.

LOUIS E. GOODMAN,
United States District Judge.

NOTE: This case was appealed to the 9th Circuit Court of Appeals and this court denied certiorari in the October Term of 1943, but the petitioner does not have the reference numbers, but the complete record is in the files of this court for that term.

In the Southern Division of the United States District Court for the Northern District of California

ROBERT STROUD, *Petitioner.*	No. 23817
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JAMES A. JOHNSTON, U. S. P., Alcatraz, California, *Respondent.*	

MODIFICATION OF MEMORANDUM OPINION

The memorandum opinion filed herein on May 6, 1943, is hereby modified and amended as follows:

The sentence reading "Petitioner apparently means Article I, Section 16 of the Constitution" (line 20 and 21, page 3 of the memorandum opinion) is hereby stricken therefrom.

Dated: May 26, 1943.

LOUIS E. GOODMAN,
United States District Judge.

In the United States District Court for the Northern District of California, Southern Division

ROBERT STROUD, *Petitioner.* vs. E. B. SWOPE, Warden, United States Penitentiary, Alcatraz, California, *Respondent.*	No. 28295 H ORDER

Petitioner, an inmate of the United States penitentiary at Alcatraz, California, brought this action for injunctive relief. Respondent moves to dismiss.

He has published a book known as "Stroud's Digest of the Diseases of Birds" with the official permission of James V. Bennett, Director of the Federal Bureau of Prisons at the time permission was given, and, as alleged, it was specifically specified in the permission granted:

> One, that L. G. Marcus should be designated by the Bureau of Prisons as official business agent for Robert Stroud;
>
> Two, that all business correspondence between petitioner and his business agent pertaining to publication, distribution, revising and advertising of said book should be privileged;
>
> Three, that the Bureau or its agents would be at no time interfere with the conduct of this business.

This permission appears to have been given when petitioner was confined in the Leavenworth Prison. Later the place of confinement was changed to Alcatraz. His complaints are directed against the present warden of that institution and the associate warden acting under an existing directive which refuses permission to inmates to carry on business while confined. It appears from his petition that letters from Marcus to petitioner have been returned to the sender and that a letter from petitioner to Marcus has been returned to petitioner. These letters relate to pending negotiations to produce a motion picture depicting petitioner's life and activities. It is also alleged that the petitioner wrote a letter to the United States Attorney which the warden refused to transmit. That letter complains of the interception of his correspondence and conditions at the prison. He prays for an order for an injunction restraining the respondent warden and his representative from "interfering in any way whatsoever with any lawful rights and privileges accruing to him under the terms of the above mentioned contract or with his correspondence with the Courts or the United States Attorney".

At the oral argument petitioner's counsel put forward the contention that the acts complained of constituted cruel and inhuman punishment in violation of the Eighth Amendment. The interference with civil rights, if such rights the petitioner has in connection with matters alleged in his petition, do not amount to cruel and inhuman punishment in violation of the constitutional guarantee. The petition is devoid of any necessary allegations from the proof of which a claim of such treatment

can be inferred. The principal argument of petitioner appears to be upon the contention that the permission granted by Bennett and later by James A. Johnston, former warden at Alcatraz, upon the faith of which petitioner published and marketed the book which he had written ripened into a contract which neither Bennett nor his successors may abrogate in the manner, as he contends, it has been abrogated and breached by the curtailment of the privilege of sending and receiving correspondence to and from the business agent and others. It would be stretching the facts beyond any warrant to hold that the petitioner has rights under a contract either express or implied in law. The most that can be said of the writing given by Bennett, assuming that the same was in writing, is that it was a permission granted to the convict. It needs no authority for the holding that such a permission was revocable in the discretion of the warden and his successor.

That the petitioner has property rights in the book is unquestioned. Yet, if the interference with his correspondence is unreasonable and is unjustifiable as a prison regulation and injures his property right such right may be and should be protected by the equitable remedy of an injunction, having in mind at all times that the equity powers of this court do not permit interference with matters of criminal law. *Platek* v. *Aderhold,* 73 F. 2d 173. On the other hand, such interference may be sustainable in the proper exercise of the right and duty of the prison authorities to maintain prison discipline.

Petitioner, though now represented by counsel, was unrepresented at the time of the filing of the petition.

Niceties in pleading are not required in petitions for writs of habeas corpus from federal prisoners. However, this is a civil action in equity, and since petitioner is now represented by counsel the pleading should be required to appropriately allege an interference with a property right, if such exists. The letters referred to do not definitely relate to the protection of property. I do not intimate that any property right which is claimed to be in jeopardy could include the exploitation by petitioner of his life and activities in the manner intimated as being in contemplation.

Also the jurisdiction of this court does not appear. Section 1343, Title 28, under the heading "Civil Rights" grants jurisdiction where there exists a conspiracy to deny civil rights. A conspiracy is not alleged. If a federal question is presented, the jurisdictional amount must be alleged.

The motion to dismiss is granted and petitioner may have 10 days in which to amend.

Dated: December 7, 1948.

DAL M. LEMMON,
United States District Judge.

February 3, 1949.

Dear Mr. Stroud:

That was very kind and thoughtful to mention a typewriter to Mr. Marcus. However, I can't type and have no use for one. Although I have not my own office I am as-

sociated in one where there are five stenographers. But I have no arrangements to use them in a case where I volunter and expect no fee. In the beginning I saw that there were lots of good things to be said in your favor and I had in mind to help more by talking than by any legal efforts which would require a lot of office work.

I have written to Mr. Marcus twice about that inquiry and he just informed me that he has it in mind but wants to know more about it from you. Did not mention it to the attorney but will tell him about it when I see him. Thought it better not to write about it at the present time. I told Mr. Marcus and forget it if I told you that two friends of mine in the retail drug business, said it should be taken up with a manufacturing Drug Co. The attorney has in mind to file a new petition.

Sincerely,

W. FALLON.

LAW OFFICES OF
JACQUES LESLIE
275 South Beverly Drive
Beverly Hills, California

February 25, 1949.

Mr. Robert Stroud,
P. N. B. 594,
Alcatraz, California.

Dear Mr. Stroud:

Your brother Marcus has informed us of your great anxiety in connection with our activities on your behalf.

Rest assured that we have not abandoned your matter, nor have we abandoned you.

We are now preparing a new petition which shall be limited to the effort to obtain for you the use of a library, a laboratory, and such correspondence which may be necessary to enable you to continue your research in ornithology.

I have noticed various articles in newspapers recently wherein your name was mentioned by other ornithologists. Apparently one or more persons who are acquainted with your digest and with your work in general were bemoaning the fact that they were unable to communicate with you for the purpose of facilitating their treatment of sick birds.

As soon as our petition is ready, I shall send it to you so that you may read it carefully, and if you agree with its contents, I will expect you to sign it and return it to me so that we may file it. Of course, I shall come to San Francisco again to present the argument in connection with that petition.

In the meantime, if there is any further information or ideas which you might care to furnish to me, I shall, of course, be most pleased to hear from you.

Trusting that I may hear from you shortly, I am,

Very truly yours,

/s/ JACQUES LESLIE.

cc: L. G. Marcus.

LAW OFFICES OF
JACQUES LESLIE
275 South Beverly Drive
Beverly Hills, California

July 5, 1949.

Robert Stroud,
P. M. B. 594,
Alcatraz, California.

Dear Mr. Stroud:

Enclosed is a first draft of a Petition for an Injunction to be presented to the United States District Court on your behalf.

Would you be kind enough to read this, make any notes or comments in connection therewith that may occur to you, and let me hear from you.

As soon as I receive your comments, I shall put this Petition in final form and have it filed.

In all probability I shall make an effort to use Mr. William Fallon as associate counsel in San Francisco, as he was of inestimable assistance in connection with the previous petition.

Yours very truly,

/s/ JACQUES LESLIE.

Encl.
cc:
G. L. Marcus
Wm. Fallon.

NATHAN COHN
Attorney at Law
Sixth Floor
105 Montgomery Street
San Francisco, California

March 2, 1951.

Mr. Robert Stroud,
No. 594,
Alcatraz, California.

Dear Mr. Stroud:

This morning I argued your case before the United States Court of Appeals for the Ninth Circuit.

I presented the argument as you wished and in the manner which you requested.

Judge Denman was not sitting today, but I wish to assure you that the Justices who were present gave your petition and my oral argument their interest and attention.

Among the main points raised by the Justices were the following:

First: The Justices raised the point that as you were not asking for unrestricted communication privileges, but merely asking for the enjoinment of any unreasonable interference with your communications, that the Court would be put in the position of the prison board in deciding whether any interference was unreasonable, should some interference arise. Of course, as you know, decisions which are not final or which would not finally decide the question are usually not rendered by the Courts.

In a case such as this, the Courts could hold that any interference by the Warden would again raise the question as to whether or not the interference was reasonable, and that further litigation would again be necessary upon every decision of the Warden.

Secondly: Even though a prisoner in Alcatraz may have a property right, does the property right hold, or is it allowed when it may endanger the prison system. By this, it is not meant that the property right must cause the prison system trouble, but if every prisoner was allowed unrestricted correspondence outside of the prison, someone might probably work out a code and endanger the entire system.

Thirdly: Does a prisoner, as a part of his property right, have the right to correspond using defamatory and antagonistic criticism? Unfortunately, the two letters that you introduced as exhibits, one to Mr. Marcus and one to Mr. Leslie, were both antagonistic and in some instances defamatory. This was even stated by yourself at the end of your memo to Mr. Marcus.

Fourthly: Is there a property right in merely corresponding with your business agent and your attorney? According to the petition and the transcript of the record, there is no book yet in evidence which the Warden has denied you the privilege of publishing. I believe that your petition would have carried much more weight had there been a manuscript and upon your attempting to send it to Mr. Marcus and the Warden refused to allow you to do so. This, of course, should have been stated in your original transcript or original petition and would have been actually an infringement on present property.

You ask me whether or not I am interested in cases of this type. I, like any other attorneys, am interested in cases which have merit, and for which I may receive a fee. Of course, like any other attorney, I do not wish to take any cases instigated merely to inconvenience, harass or embarrass the prison officials or the Government officials. If any prisoner is the victim of any injury, I feel it my duty and obligation to assist them if I can.

I would be happy to hear from anyone who has a legitimate complaint for which there is a legal remedy.

As soon as I hear anything regarding the decision, I will advise you.

Kindest personal regards.

Very truly yours,

/s/ NATHAN COHN.

cc: L. G. Marcus.

CERTIFICATION

This is to certify that I have inspected the document in the possession of Robert Stroud, copies of which are contained in this Appendix, B. C. D., and E and which consist of the following items:

B. Official Copy of Memorandum Opinion of Judge Louis E. Goodman, in case No. 23817.

Correction of Judge Goodman's Opinion;

C. Order of Judge Dal Lemmon (in case No. 28295-H:

D. Letter from Attorney William Fallon of the date of February 3, 1949;

Letter from Attorney Jacques Leslie of the date of February 25, 1949;

Letter from Attorney Jacques Leslie of the date of July 5, 1949;

E. Letter from Attorney Jacques Leslie of the date of July 5, 1949;

Letter from Attorney Jacques Leslie of the date of July 5, 1949;

and I find that the copies of those documents contained in this appendix are true and faithful reproductions of the originals, and in certification of this fact I hereto set my hand and seal.

Warden-Associate Warden authorized by the Act of February 11, 1938, to administer oaths:

NOVA F. STUCKER,
Act. Associate Warden,
U. S. Penitentiary, Alcatraz, Calif.

Records at U. S. Penitentiary, Alcatraz, California, Indicate that Robert Stroud is a citizen of the United States.

Date: July 19, 1951.

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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 213

ROBERT STROUD, PETITIONER

v.

E. B. SWOPE, WARDEN, UNITED STATES PENITENTIARY, ALCATRAZ, CALIFORNIA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinions of the Court of Appeals (R. 56–60) are reported at 187 F. 2d 850.

JURISDICTION

The judgment of the Court of Appeals was entered on March 9, 1951 (R. 60). On May 28 and June 18 the time for filing a petition for a writ of certiorari was extended by orders of the Chief Justice to June 30 and July 30, 1951, respectively (R. 61–62). The petition for a writ of certiorari was filed on July 30, 1951. The juris-

diction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether a federal District Court should enjoin, as unconstitutional, enforcement by the warden of a federal prison of a disciplinary prison order forbidding inmates to transact business by correspondence.

STATUTES INVOLVED

18 U. S. C. 4042 (Supp. IV, 1946 ed.) provides:

> The Bureau of Prisons, under the direction of the Attorney General, shall—
>
> (1) have charge of the management and regulation of all Federal penal and correctional institutions;
>
> (2) provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise;
>
> (3) provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States.
>
> This section shall not apply to military or naval penal or correctional institutions or the persons confined therein.

1979 R. S. (8 U. S. C. (1946 ed.) 43) provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the

> United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

1980 R. S. (8 U. S. C. (1946 ed.) 47) provides in pertinent part:

> * * * in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

STATEMENT

Petitioner, a United States citizen serving a life sentence in Alcatraz Penitentiary for murder, brought suit in the District Court for the Northern District of California against respondent warden, under what he termed a "petition for an injunction restraining the respondent * * * from unlawful interference with the lawful business interests of the petitioner or of depriving the petitioner of property rights secured to him under

the Constitution and laws of the United States, and other redress"[1] (R. 2–18; Pet. 41).

The allegations of the complaint filed by petitioner in the District Court may be summarized as follows:

An order issued by the federal prison authorities on October 4, 1931, but pre-dated to July 1, 1931, forbade inmates of Federal prisons to transact any kind of business by correspondence.[2] Respondent and other officials of the Bureau of Prisons were engaged in a conspiracy to deprive petitioner of his lawful property rights without

[1] A prior petition for a writ of habeas corpus filed by petitioner was denied. See *Stroud* v. *Johnston*, 139 F. 2d 171 (C. A. 9), certiorari denied, 321 U. S. 796.

[2] This order provided: "An inmate may not be permitted to transact business by correspondence, no matter how legitimate it may be. Correspondence with business associates must be limited to social matters only." (Pet. 33; R. 15.) It was promulgated pursuant to the Act of May 14, 1930, c. 274, §§ 2, 3, 46 Stat. 325, which is presently embraced in very similar terms in 18 U. S. C. 4042 (p. 2, *supra*).

Paragraph 2 of Section b at pages 2 and 3 of Manual Bulletin No. 96, dated February 23, 1944, issued by the Director of the Bureau of Prisons, reads in pertinent part: "* * * *Correspondence with business associates, of course, must be limited to social matters. An inmate cannot be permitted to direct his business, no matter how legitimate it may be, while he is in prison.* But this does not go to the point of prohibiting correspondence necessary to enable the inmate to protect and husband the property and funds that were legitimately his at the time he entered the institution. Thus a prisoner could correspond about refinancing a mortgage on his home or sign insurance papers, but he could not operate a mortgage or insurance business while in the institution." (R. 58; emphasis added.)

due process of law by enforcing this unconstitutional order against him (R. 3–4, 15–16). Petitioner was the author of two books on birds, "Diseases of Canaries" and "Stroud's Digest on the Diseases of Birds," and was also interested in the production of a motion picture to be based upon his life story (R. 4, 6, 7–8, 9–10). The arrangements as to sale of the rights to the books, negotiations for the motion picture contract, and other business matters of petitioner were being handled by his brother, who went under the name of L. G. Marcus, as his business agent (R. 7–8, 10–11).

In a letter dated January 14, 1950 (petitioner's Ex. A, R. 29–34) from petitioner to one Leslie, the lawyer for the motion picture producer interested in petitioner's life story, he criticized Leslie for the past handling of his legal affairs, stated the terms upon which he would sign a new picture contract, and appended to the letter an outline (R. 34–48) of an analytical history of the federal prison system which he proposed to write in a new book on this subject. Petitioner was permitted by the prison authorities to mail the letter, but not the outline, to Leslie, and he was not allowed to mail copies of the letter and outline to Marcus. (R. 8–9.)

Subsequent to interviews on February 8 and 10, 1950, with Marcus on various subjects of petitioner's private business, petitioner wrote a memorandum (Pet. Ex. B, R. 22–29), giving instruc-

tions as to the sale of some of his books, the formation of an educational and research institution to be known as Stroud's Laboratory, Incorporated, and the conveyance of certain real property to the corporation by his friend, a Mrs. Foote. On February 14, 1950, the prison authorities returned this memorandum to petitioner. (R. 10–12.)

Petitioner alleged that the refusal by respondent to permit the mailing of the matters outlined above, in compliance with the order forbidding inmates to conduct business by correspondence, deprived him of his property rights without due process of law (R. 9, 12). He prayed for a temporary and permanent injunction against the enforcement of the order proscribing business correspondence as being unconstitutional, and asked for damages in such amount as the court might find that he had been injured (R. 17).

The District Court ruled as follows (R. 48):

> The petition for injunction is denied. Treating the petition as one for the writ of habeas corpus, it is denied and the proceeding is dismissed.

On appeal, the Court of Appeals denied petitioner's application for a writ of habeas corpus ordering that he be produced to argue his appeal,[3] and affirmed the judgment of the District Court (R. 49, 55, 60).

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[3] Petitioner's appeal was argued by court-appointed counsel (Pet. 38; R. 55).

ARGUMENT

Petitioner's basic contention is that the order forbidding prison inmates to transact business by correspondence (p. 4, *supra*) is unconstitutional as depriving him of his property without due process of law, and is therefore subject to judicial review. Asserting that his property rights in his literary publications and other business interests are protected under 1979 and 1980 R. S. (8 U. S. C. (1946 ed.) 43 and 47) (pp. 2–3, *supra*), he claims that the warden should be enjoined from enforcing the order, and that damages suffered by him as a result of the alleged conspiracy against him should be assessed in his favor. (Pet. 17, 27, 33, 35.) Petitioner's position is untenable.[4]

Petitioner, while an inmate of a Federal prison, has no right to carry on unlimited correspondence with the outside world regarding his business ventures.[5] Such a prerogative is conferred neither

[4] Petitioner's complaint is denominated a "petition for an injunction," etc. (R. 2), but since it is not clear as to just what petitioner is seeking, the district judge acted properly in treating it as a petition for habeas corpus (R. 48, 57). Cf. *Secchi* v. *U. S. Bureau of Immigration*, 58 F. Supp. 569 (M. D. Pa.). And since the petition showed upon its face that there was no cause for granting the writ, there was no occasion for the district judge to order the production of the prisoner (See Pet. 36–38) before dismissing the petition. Cf. *Johnson* v. *Eisentrager*, 339 U. S. 763, 768; *Walker* v. *Johnston*, 312 U. S. 275, 284.

[5] Petitioner does not limit his claim to only "reasonable correspondence," as his counsel did in arguing his appeal (R. 57).

by the Constitution nor by statute. As this Court noted in *Price* v. *Johnston,* 334 U. S. 266, 285, "Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." A privilege of carrying on unlimited business correspondence for all inmates would impose an unduly onerous burden of administrative supervision upon the prison authorities, and increase opportunities for escape. The order banning the transaction of business by correspondence was a reasonable regulation made pursuant to 18 U. S. C. 4042 (p. 2, *supra*) in the exercise of the undoubted authority to superintend the discipline of federal prisoners. The court below was clearly right in holding that "it is not the function of the courts to superintend the treatment and discipline of prisoners in penitentiaries, but only to deliver from imprisonment those who are illegally confined." (R. 59.)*

There is, of course, no question here of the exercise of an absolute power by prison authorities, as

* See *Siegel* v. *Ragen*, 180 F. 2d 785, 788 (C. A. 7), certiorari denied, 339 U. S. 990; *Taylor* v. *United States*, 179 F. 2d 640, 643 (C. A. 9); *Powell* v. *Hunter*, 172 F. 2d 330, 331 (C. A. 10); *Numer* v. *Miller*, 165 F. 2d 986 (C. A. 9); *Shepherd* v. *Hunter*, 163 F. 2d 872, 874 (C. A. 10); *Sanders* v. *Johnston*, 159 F. 2d 74 (C. A. 9); *Snow* v. *Roche*, 143 F. 2d 718, 719 (C. A. 9), certiorari denied, 323 U. S. 788; *Sarshik* v. *Sanford*, 142 F. 2d 676 (C. A. 5); *Platek* v. *Aderhold*, 73 F. 2d 173, 175 (C. A. 5).

contended by petitioner (Pet. 8), to promulgate arbitrary rules under which a "prisoner may be beaten, hung up by the thumbs, starved to death, or deliberately murdered." It is merely a case of the exercise of wise discretion by prison authorities in order to maintain necessary and proper prison discipline. And as the court below said (R. 59):

> Congress has carefully refrained from imposing upon the courts the authority to interfere with matters of prison discipline affecting activities of the character revealed by the record in this case.

Hence, cases such as *Coffin* v. *Reichard,* 143 F. 2d 443, 444–445 (C. A. 6), and *In re Birdsong,* 39 Fed. 599 (S. D. Ga.), involving cruelties to prisoners, upon which petitioner relies (see Pet. 9–10, 18), are inapposite.[7]

---

[7] Petitioner also contends (Pet. 31–32) that a single district judge did not have power to dismiss his petition, but that only a three-judge court could do this under 28 U. S. C. 2282, which provides: "An interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress for repugnance to the Constitution of the United States shall not be granted by any district court or judge thereof unless the application therefor is heard and determined by a district court of three judges under Section 2284 of this title." Petitioner's complaint, however, did not seek to enjoin the enforcement of any act of Congress as such. Hence, Section 2282 is plainly not controlling. In any event, the complaint did not state facts entitling petitioner to the relief prayed.

CONCLUSION

The judgment below is correct and no conflict of decisions is presented. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

PHILIP B. PERLMAN,
Solicitor General.
JAMES M. MCINERNEY,
Assistant Attorney General.
ROBERT S. ERDAHL,
ROBERT G. MAYSACK,
Attorneys.

SEPTEMBER 1951.

U. S. GOVERNMENT PRINTING OFFICE: 1951